

110TH CONGRESS
2D SESSION

H. R. 5841

To provide regulatory relief and improve productivity for insured depository institutions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 17, 2008

Mr. MOORE of Kansas (for himself and Mr. ROSKAM) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To provide regulatory relief and improve productivity for insured depository institutions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Bank and Thrift Regulatory Relief Act of 2008”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—NATIONAL BANK PROVISIONS

Sec. 101. National bank directors.

Sec. 102. Business organization flexibility for national banks.

TITLE II—SAVINGS ASSOCIATION PROVISIONS

Sec. 301. Exception to annual privacy notice requirement under the Gramm-Leach-Bliley Act.

Sec. 401. Short title.

Sec. 402. Interest-bearing transaction accounts authorized for all businesses.

Sec. 403. Interest-bearing transaction accounts authorized.

Sec. 404. Rules of construction.

Sec. 405. Consumer banking costs assessment.

3 SEC. 101. NATIONAL BANK DIRECTORS.

6 (1) by striking “SEC. 5146. Every director
7 must during” and inserting the following:

9 “(a) RESIDENCY REQUIREMENTS.—Every director of
10 a national bank shall, during”;

11 (2) by striking “total number of directors.
12 Every director must own in his or her own right”
13 and inserting “total number of directors.

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1 “(1) IN GENERAL.—Every director of a na-
2 tional bank shall own, in his or her own right,”; and

3 (3) by adding at the end the following new
4 paragraph:

5 “(2) EXCEPTION FOR SUBORDINATED DEBT IN
6 CERTAIN CASES.—In lieu of the requirements of
7 paragraph (1) relating to the ownership of capital
8 stock in the national bank, the Comptroller of the
9 Currency may, by regulation or order, permit an in-
10 dividual to serve as a director of a national bank
11 that has elected, or notifies the Comptroller of the
12 bank’s intention to elect, to operate as a S corpora-
13 tion pursuant to section 1362(a) of the Internal
14 Revenue Code of 1986, if that individual holds debt
15 of at least \$1,000 issued by the national bank that
16 is subordinated to the interests of depositors and
17 other general creditors of the national bank.”.

18 (b) CLERICAL AMENDMENT.—The table of sections
19 for chapter one of title LXII of the Revised Statutes of
20 the United States (12 U.S.C. 21 et seq.) is amended by
21 striking the item relating to section 5146 and inserting
22 the following new item:

“5146. Requirements for bank directors”.

1 **SEC. 102. BUSINESS ORGANIZATION FLEXIBILITY FOR NA-**
2 **TIONAL BANKS.**

3 (a) IN GENERAL.—Chapter one of title LXII of the
4 Revised Statutes of the United States (12 U.S.C. 21 et
5 seq.) is amended by inserting after section 5136B the fol-
6 lowing new section:

7 **“SEC. 5136C. ALTERNATIVE BUSINESS ORGANIZATION.**

8 “(a) IN GENERAL.—The Comptroller of the Currency
9 may prescribe regulations—

10 “(1) to permit a national bank to be organized
11 other than as a body corporate; and

12 “(2) to provide requirements for the organiza-
13 tional characteristics of a national bank organized
14 and operating other than as a body corporate, con-
15 sistent with the safety and soundness of the national
16 bank.

17 “(b) EQUAL TREATMENT.—Except as provided in
18 regulations prescribed under subsection (a), a national
19 bank that is operating other than as a body corporate shall
20 have the same rights and privileges and shall be subject
21 to the same duties, restrictions, penalties, liabilities, condi-
22 tions, and limitations as a national bank that is organized
23 as a body corporate.”.

24 (b) TECHNICAL AND CONFORMING AMENDMENT.—
25 Section 5136 of the Revised Statutes of the United States
26 (12 U.S.C. 24) is amended, in the matter preceding the

1 paragraph designated as the “First”, by inserting “or
 2 other form of business organization provided under regula-
 3 tions prescribed by the Comptroller of the Currency under
 4 section 5136C” after “a body corporate”.

5 (c) CLERICAL AMENDMENT.—The table of sections
 6 for chapter one of title LXII of the Revised Statutes of
 7 the United States (12 U.S.C. 21 et seq.) is amended by
 8 inserting after the item relating to section 5136B the fol-
 9 lowing new item:

“5136C. Alternative business organization.”.

10 **TITLE II—SAVINGS ASSOCIATION** 11 **PROVISIONS**

12 **SEC. 201. RESTATEMENT OF AUTHORITY FOR FEDERAL** 13 **SAVINGS ASSOCIATIONS TO INVEST IN SMALL** 14 **BUSINESS INVESTMENT COMPANIES.**

15 Subparagraph (D) of section 5(c)(4) of the Home
 16 Owners’ Loan Act (12 U.S.C. 1464(c)(4)) is amended to
 17 read as follows:

18 “(D) SMALL BUSINESS INVESTMENT COM-
 19 PANIES.—Any Federal savings association may
 20 invest in 1 or more small business investment
 21 companies, or in any entity established to invest
 22 solely in small business investment companies
 23 formed under the Small Business Investment
 24 Act of 1958, except that the total amount of in-
 25 vestments under this subparagraph may not at

1 any time exceed the amount equal to 5 percent
 2 of capital and surplus of the savings associa-
 3 tion.”.

4 **SEC. 202. REMOVAL OF LIMITATION ON INVESTMENTS IN**
 5 **AUTO LOANS.**

6 (a) IN GENERAL.—Section 5(c)(1) of the Home Own-
 7 ers’ Loan Act (12 U.S.C. 1464(c)(1)) is amended by add-
 8 ing at the end the following new subparagraph:

9 “(V) AUTO LOANS.—Loans and leases for
 10 motor vehicles acquired for personal, family, or
 11 household purposes.”.

12 (b) TECHNICAL AND CONFORMING AMENDMENT RE-
 13 LATING TO QUALIFIED THRIFT INVESTMENTS.—Section
 14 10(m)(4)(C)(ii) of the Home Owners’ Loan Act (12
 15 U.S.C. 1467a(m)(4)(C)(ii)) is amended by adding at the
 16 end the following new subclause:

17 “(VIII) Loans and leases for
 18 motor vehicles acquired for personal,
 19 family, or household purposes.”.

20 **SEC. 203. REPEAL OF QUALIFIED THRIFT LENDER RE-**
 21 **QUIREMENT WITH RESPECT TO OUT-OF-**
 22 **STATE BRANCHES.**

23 Section 5(r)(1) of the Home Owners’ Loan Act (12
 24 U.S.C. 1464(r)(1)) is amended by striking the last sen-
 25 tence.

1 **SEC. 204. SMALL BUSINESS AND OTHER COMMERCIAL**
 2 **LOANS.**

3 (a) ELIMINATION OF LENDING LIMIT ON SMALL
 4 BUSINESS LOANS.—Section 5(c)(1) of the Home Owners’
 5 Loan Act (12 U.S.C. 1464(c)(1)) is amended by inserting
 6 after subparagraph (V) (as added by section 202(a) of this
 7 title) the following new subparagraph:

8 “(W) SMALL BUSINESS LOANS.—Small
 9 business loans, as defined in regulations which
 10 the Director shall prescribe.”.

11 (b) INCREASE IN LENDING LIMIT ON OTHER BUSI-
 12 NESS LOANS.—Section 5(c)(2)(A) of the Home Owners’
 13 Loan Act (12 U.S.C. 1464(c)(2)(A)) is amended by strik-
 14 ing “, and amounts in excess of 10 percent” and all that
 15 follows through “by the Director”.

16 **SEC. 205. INCREASE IN LIMITS ON COMMERCIAL REAL ES-**
 17 **TATE LOANS.**

18 Section 5(c)(2)(B)(i) of the Home Owners’ Loan Act
 19 (12 U.S.C. 1464(c)(2)(B)(i)) is amended by striking “400
 20 percent” and inserting “500 percent”.

21 **SEC. 206. BUSINESS ORGANIZATION FLEXIBILITY FOR FED-**
 22 **ERAL SAVINGS ASSOCIATIONS.**

23 (a) IN GENERAL.—Section 5 of the Home Owners’
 24 Loan Act (12 U.S.C. 1464) is amended by adding at the
 25 end the following new subsection:

26 “(y) ALTERNATIVE BUSINESS ORGANIZATION.—

1 “(1) IN GENERAL.—The Director may prescribe
2 regulations that—

3 “(A) permit a Federal savings association
4 to be organized other than as a corporation;
5 and

6 “(B) provide requirements for the organi-
7 zational characteristics of a Federal savings as-
8 sociation organized and operating other than as
9 a corporation, consistent with the safety and
10 soundness of the Federal savings association.

11 “(2) EQUAL TREATMENT.—Except as otherwise
12 provided in regulations prescribed under subsection
13 (1), a Federal savings association that is operating
14 other than as a corporation shall have the same
15 rights and privileges and shall be subject to the
16 same duties, restrictions, penalties, liabilities, condi-
17 tions, and limitations as a Federal savings associa-
18 tion that is organized as a corporation.”.

19 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

20 (1) Section 5(a)(1) of the Home Owners’ Loan
21 Act (12 U.S.C. 1464(a)(1)) is amended by striking
22 “organization, incorporation,” and inserting “organi-
23 zation (as a corporation or other form of business
24 organization provided under regulations prescribed
25 by the Director under subsection (x)),”.

1 (2) The last sentence of section 5(i)(1) of the
 2 Home Owners' Loan Act (12 U.S.C. 1464(i)(1)) is
 3 amended by striking “incorporated” and inserting
 4 “organized”.

5 (3) Section 5(o)(1) of the Home Owners' Loan
 6 Act (12 U.S.C. 1464(a)(1)) is amended by striking
 7 “organization, incorporation,” and inserting “organi-
 8 zation (as a corporation or other form of business
 9 organization provided under regulations prescribed
 10 by the Director under subsection (x)),”.

11 **SEC. 207. SAVINGS ASSOCIATION CREDIT CARD BANKS.**

12 Section 10(a)(1)(A) of the Home Owners' Loan Act
 13 (12 U.S.C. 1467a(a)(1)(A)) is amended by inserting “and
 14 such term does not include an institution described in sec-
 15 tion 2(c)(2)(F) of the Bank Holding Company Act of 1956
 16 for purposes of subsections (a)(1)(E), (c)(3)(B)(i),
 17 (c)(9)(C)(i), and (e)(3)” before the period at the end.

18 **TITLE III—NOTICE PROVISIONS**

19 **SEC. 301. EXCEPTION TO ANNUAL PRIVACY NOTICE RE-**
 20 **QUIREMENT UNDER THE GRAMM-LEACH-BLI-**
 21 **LEY ACT.**

22 Section 503 of the Gramm-Leach-Bliley Act (15
 23 U.S.C. 6803) is amended by adding the following new sub-
 24 sections:

1 “(c) EXCEPTION TO ANNUAL NOTICE REQUIRE-
2 MENT.—A financial institution that—

3 “(1) provides nonpublic personal information
4 only in accordance with the provisions of subsection
5 (b)(2) or (e) of section 502 or regulations prescribed
6 under section 504(b);

7 “(2) does not share information with affiliates
8 under section 603(d)(2)(A)(iii) of the Fair Credit
9 Reporting Act; and

10 “(3) has not changed its policies and practices
11 with regard to disclosing nonpublic personal infor-
12 mation from the policies and practices that were dis-
13 closed in the most recent disclosure sent to con-
14 sumers in accordance with this subsection,
15 shall not be required to provide an annual disclosure under
16 this subsection until such time as the financial institution
17 fails to comply with any criteria described in paragraph
18 (1), (2), or (3).

19 “(d) EXCEPTION TO NOTICE REQUIREMENT.—A fi-
20 nancial institution shall not be required to provide any dis-
21 closure under this section if—

22 “(1) the financial institution is licensed by a
23 State and is subject to existing regulation of con-
24 sumer confidentiality that prohibits disclosure of
25 nonpublic personal information without knowing and

1 expressed consent of the consumer in the form of
2 laws, rules, or regulation of professional conduct or
3 ethics promulgated either by the court of highest ap-
4 pellate authority or by the principal legislative body
5 or regulatory agency or body of any State of the
6 United States, the District of Columbia, any terri-
7 tory of the United States, Puerto Rico, Guam,
8 American Samoa, the Trust Territory of the Pacific
9 Islands, the Virgin Islands, or the Northern Mariana
10 Islands; or

11 “(2) the financial institution is licensed by a
12 State and becomes subject to future regulation of
13 consumer confidentiality that prohibits disclosure of
14 nonpublic personal information without knowing and
15 expressed consent of the consumer in the form of
16 laws, rules, or regulation of professional conduct or
17 ethics promulgated either by the court of highest ap-
18 pellate authority or by the principal legislative body
19 or regulatory agency or body of any State of the
20 United States, the District of Columbia, any terri-
21 tory of the United States, Puerto Rico, Guam,
22 American Samoa, the Trust Territory of the Pacific
23 Islands, the Virgin Islands, or the Northern Mariana
24 Islands.”.

1 **TITLE IV—BUSINESS CHECKING**

2 **SEC. 401. SHORT TITLE.**

3 This title may be cited as the “Business Checking
4 Fairness Act of 2008”.

5 **SEC. 402. INTEREST-BEARING TRANSACTION ACCOUNTS**

6 **AUTHORIZED FOR ALL BUSINESSES.**

7 Section 2 of Public Law 93–100 (12 U.S.C. 1832)
8 is amended—

9 (1) by redesignating subsections (b) and (c) as
10 subsections (c) and (d), respectively; and

11 (2) by inserting after subsection (a) the fol-
12 lowing:

13 “(b) Notwithstanding any other provision of law, any
14 depository institution may permit the owner of any deposit
15 or account which is a deposit or account on which interest
16 or dividends are paid and is not a deposit or account de-
17 scribed in subsection (a)(2) to make up to 24 transfers
18 per month (or such greater number as the Board of Gov-
19 ernors of the Federal Reserve System may determine by
20 rule or order), for any purpose, to another account of the
21 owner in the same institution. An account offered pursu-
22 ant to this subsection shall be considered a transaction
23 account for purposes of section 19 of the Federal Reserve
24 Act unless the Board of Governors of the Federal Reserve
25 System determines otherwise.”.

1 **SEC. 403. INTEREST-BEARING TRANSACTION ACCOUNTS**

2 **AUTHORIZED.**

3 (a) REPEAL OF PROHIBITION ON PAYMENT OF IN-
4 TEREST ON DEMAND DEPOSITS.—

5 (1) FEDERAL RESERVE ACT.—Section 19(i) of
6 the Federal Reserve Act (12 U.S.C. 371a) is amend-
7 ed to read as follows:

8 “(i) [Repealed]”.

9 (2) HOME OWNERS’ LOAN ACT.—The first sen-
10 tence of section 5(b)(1)(B) of the Home Owners’
11 Loan Act (12 U.S.C. 1464(b)(1)(B)) is amended by
12 striking “savings association may not—” and all
13 that follows through “(ii) permit any” and inserting
14 “savings association may not permit any”.

15 (3) FEDERAL DEPOSIT INSURANCE ACT.—Sec-
16 tion 18(g) of the Federal Deposit Insurance Act (12
17 U.S.C. 1828(g)) is amended to read as follows:
18 “(g) [Repealed]”.

19 (b) EFFECTIVE DATE.—The amendments made by
20 subsection (a) shall take effect at the end of the 2-year
21 period beginning on the date of the enactment of this Act.

22 **SEC. 404. RULES OF CONSTRUCTION.**

23 In the case of an escrow account maintained at a de-
24 pository institution for the purpose of completing the set-
25 tlement of a real estate transaction—

1 (1) the absorption, by the depository institution,
2 of expenses incidental to providing a normal banking
3 service with respect to such escrow account;

4 (2) the forbearance, by the depository institu-
5 tion, from charging a fee for providing any such
6 banking function; and

7 (3) any benefit which may accrue to the holder
8 or the beneficiary of such escrow account as a result
9 of an action of the depository institution described
10 in subparagraph (1) or (2) or similar in nature to
11 such action, including any benefits which have been
12 so determined by the appropriate Federal regulator,
13 shall not be treated as the payment or receipt of interest
14 for purposes of this title and any provision of Public Law
15 93–100, the Federal Reserve Act, the Home Owners’ Loan
16 Act, or the Federal Deposit Insurance Act relating to the
17 payment of interest on accounts or deposits at depository
18 institutions. No provision of this title shall be construed
19 so as to require a depository institution that maintains
20 an escrow account in connection with a real estate trans-
21 action to pay interest on such escrow account or to pro-
22 hibit such institution from paying interest on such escrow
23 account. No provision of this title shall be construed as
24 preempting the provisions of law of any State dealing with

1 the payment of interest on escrow accounts maintained in
2 connection with real estate transactions.

3 **SEC. 405. CONSUMER BANKING COSTS ASSESSMENT.**

4 (a) IN GENERAL.—The Federal Reserve Act (12
5 U.S.C. 221 et seq.) is amended—

6 (1) by redesignating sections 30 and 31 as sec-
7 tions 31 and 32, respectively; and

8 (2) by inserting after section 29 the following
9 new section:

10 **“SEC. 30. SURVEY OF BANK FEES AND SERVICES.**

11 “(a) BIENNIAL SURVEY REQUIRED.—The Board of
12 Governors of the Federal Reserve System shall obtain bi-
13 ennially a sample, which is representative by type and size
14 of the institution (including small institutions) and geo-
15 graphic location, of the following retail banking services
16 and products provided by insured depository institutions
17 and insured credit unions (along with related fees and
18 minimum balances):

19 “(1) Checking and other transaction accounts.

20 “(2) Negotiable order of withdrawal and sav-
21 ings accounts.

22 “(3) Automated teller machine transactions.

23 “(4) Other electronic transactions.

1 “(b) MINIMUM SURVEY REQUIREMENT.—The bien-
2 nial survey described in subsection (a) shall meet the fol-
3 lowing minimum requirements:

4 “(1) CHECKING AND OTHER TRANSACTION AC-
5 COUNTS.—Data on checking and transaction ac-
6 counts shall include, at a minimum, the following:

7 “(A) Monthly and annual fees and min-
8 imum balances to avoid such fees.

9 “(B) Minimum opening balances.

10 “(C) Check processing fees.

11 “(D) Check printing fees.

12 “(E) Balance inquiry fees.

13 “(F) Fees imposed for using a teller or
14 other institution employee.

15 “(G) Stop payment order fees.

16 “(H) Nonsufficient fund fees.

17 “(I) Overdraft fees.

18 “(J) Fees imposed in connection with
19 bounced-check protection and overdraft protec-
20 tion programs.

21 “(K) Deposit items returned fees.

22 “(L) Availability of no-cost or low-cost ac-
23 counts for consumers who maintain low bal-
24 ances.

1 “(2) NEGOTIABLE ORDER OF WITHDRAWAL AC-
2 COUNTS AND SAVINGS ACCOUNTS.—Data on nego-
3 tiable order of withdrawal accounts and savings ac-
4 counts shall include, at a minimum, the following:

5 “(A) Monthly and annual fees and min-
6 imum balances to avoid such fees.

7 “(B) Minimum opening balances.

8 “(C) Rate at which interest is paid to con-
9 sumers.

10 “(D) Check processing fees for negotiable
11 order of withdrawal accounts.

12 “(E) Fees imposed for using a teller or
13 other institution employee.

14 “(F) Availability of no-cost or low-cost ac-
15 counts for consumers who maintain low bal-
16 ances.

17 “(3) AUTOMATED TELLER TRANSACTIONS.—
18 Data on automated teller machine transactions shall
19 include, at a minimum, the following:

20 “(A) Monthly and annual fees.

21 “(B) Card fees.

22 “(C) Fees charged to customers for with-
23 drawals, deposits, and balance inquiries through
24 institution-owned machines.

1 “(D) Fees charged to customers for with-
2 drawals, deposits, and balance inquiries through
3 machines owned by others.

4 “(E) Fees charged to noncustomers for
5 withdrawals, deposits, and balance inquiries
6 through institution-owned machines.

7 “(F) Point-of-sale transaction fees.

8 “(4) OTHER ELECTRONIC TRANSACTIONS.—
9 Data on other electronic transactions shall include,
10 at a minimum, the following:

11 “(A) Wire transfer fees.

12 “(B) Fees related to payments made over
13 the Internet or through other electronic means.

14 “(5) OTHER FEES AND CHARGES.—Data on
15 any other fees and charges that the Board of Gov-
16 ernors of the Federal Reserve System determines to
17 be appropriate to meet the purposes of this section.

18 “(6) FEDERAL RESERVE BOARD AUTHORITY.—
19 The Board of Governors of the Federal Reserve Sys-
20 tem may cease the collection of information with re-
21 gard to any particular fee or charge specified in this
22 subsection if the Board makes a determination that,
23 on the basis of changing practices in the financial
24 services industry, the collection of such information

1 is no longer necessary to accomplish the purposes of
2 this section.

3 “(c) BIENNIAL REPORT TO CONGRESS REQUIRED.—

4 “(1) PREPARATION.—The Board of Governors
5 of the Federal Reserve System shall prepare a report
6 of the results of each survey conducted pursuant to
7 subsections (a) and (b) of this section and section
8 136(b)(1) of the Consumer Credit Protection Act.

9 “(2) CONTENTS OF THE REPORT.—In addition
10 to the data required to be collected pursuant to sub-
11 sections (a) and (b), each report prepared pursuant
12 to paragraph (1) shall include a description of any
13 discernible trend, in the Nation as a whole, in a rep-
14 resentative sample of the 50 States (selected with
15 due regard for regional differences), and in each
16 consolidated metropolitan statistical area (as defined
17 by the Director of the Office of Management and
18 Budget), in the cost and availability of the retail
19 banking services, including those described in sub-
20 sections (a) and (b) (including related fees and min-
21 imum balances), that delineates differences between
22 institutions on the basis of the type of institution
23 and the size of the institution, between large and
24 small institutions of the same type, and any engage-
25 ment of the institution in multistate activity.

1 “(3) SUBMISSION TO THE CONGRESS.—The
2 Board of Governors of the Federal Reserve System
3 shall submit an biennial report to the Congress not
4 later than June 1, 2009, and before the end of each
5 2-year period beginning after such date.

6 “(d) DEFINITIONS.—For purposes of this section, the
7 term ‘insured depository institution’ has the meaning
8 given such term in section 3 of the Federal Deposit Insur-
9 ance Act, and the term ‘insured credit union’ has the
10 meaning given such term in section 101 of the Federal
11 Credit Union Act.”.

12 (b) CONFORMING AMENDMENT.—

13 (1) IN GENERAL.—Paragraph (1) of section
14 136(b) of the Truth in Lending Act (15 U.S.C.
15 1646(b)(1)) is amended to read as follows:

16 “(1) COLLECTION REQUIRED.—The Board shall
17 collect, on a semiannual basis, from a broad sample
18 of financial institutions which offer credit card serv-
19 ices, credit card price and availability information
20 including—

21 “(A) the information required to be dis-
22 closed under section 127(c);

23 “(B) the average total amount of finance
24 charges paid by consumers; and

1 “(C) the following credit card rates and
2 fees:

3 “(i) Application fees.

4 “(ii) Annual percentage rates for cash
5 advances and balance transfers.

6 “(iii) Maximum annual percentage
7 rate that may be charged when an account
8 is in default.

9 “(iv) Fees for the use of convenience
10 checks.

11 “(v) Fees for balance transfers.

12 “(vi) Fees for foreign currency con-
13 versions.”.

14 (2) EFFECTIVE DATE.—The amendment made
15 by paragraph (1) shall take effect on January 1,
16 2009.

17 (c) REPEAL OF OTHER REPORT PROVISIONS.—Sec-
18 tion 1002 of Financial Institutions Reform, Recovery, and
19 Enforcement Act of 1989 and section 108 of the Riegle-
20 Neal Interstate Banking and Branching Efficiency Act of
21 1994 are hereby repealed.

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